

Applicants: Yuan Chang and Patrick S. Moore
Serial No.: 09/607,179
Filed : June 29, 2000
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REMARKS

Claims 44-48, 52 and 53 are pending in the subject application. Claims 44-48 are canceled herein as withdrawn. Entry of this amendment is respectfully requested, such that claims 52 and 53 will be pending.

The Examiner required restriction to one of the following inventions under 35 U.S.C. §121:

1. Claims 44-48, drawn to an antibody for a peptide that uniquely defines a herpesvirus associated with Karposi's sarcoma, classified in class 530, subclass 387.1.

2-37. Claims 52-53, drawn to a peptide that uniquely defines a herpesvirus associated with Karposi's sarcoma, wherein the polypeptide is one of those encoded by at least a portion of one of the sequences set forth in SEQ ID NOS: 2-37, and a composition thereof, classified in class 530, subclass 300.

In response to this restriction requirement, applicants hereby elect, with traverse, to prosecute the invention of Examiner's Group 14, i.e. claims 52 and 53, drawn to a peptide encoded by at least a portion of a nucleic acid molecule with a sequence as set forth in SEQ ID NO: 14, and a related composition.

Applicants note that 35 U.S.C. §121 states, in part, that "[i]f two or more independent and distinct inventions are claimed in one application, the Commissioner may require the application to be restricted to one of the inventions." [Emphasis added].

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Applicants request that the restriction of Examiner's Groups 2-37 from each other be withdrawn in view of the fact that the claims of Examiner's Groups 2-37 are not independent of each other. Applicants maintain that the claims of Examiner's Groups 2-37 do not define patentably distinct inventions.

Under M.P.E.P. §802.1, "independent" means "there is no disclosed relationship between the subjects disclosed, that is, they are unconnected in design, operation, and effect." The claims of Examiner's Group 14, relating to a Kaposi's Sarcoma-related herpesvirus, are related to the claims of Examiner's Groups 2-13 and 15-37, which are also related to Kaposi's Sarcoma-related herpesvirus.

Applicants therefore respectfully assert that two or more independent and distinct inventions have not been claimed in the subject application because the groups are not independent under M.P.E.P. §802.01. Therefore, restriction is improper under 35 U.S.C. §121.

Additionally, applicants point out that under M.P.E.P. §803, the Examiner must examine the application on the merits, even though it includes claims to distinct inventions, if the search and examination of an application can be made without serious burden. There are two criteria for a proper requirement for restriction, namely (1) the invention must be independent and distinct; AND (2) there must be a serious burden on the Examiner if restriction is not required.

Applicants maintain that there would not be a serious burden on the Examiner if restriction were not required. A search of prior art with regard to Group 14 would render a search of prior art

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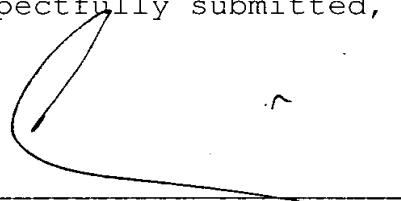
with regard to Groups 2-13 and 15-37 to be free of undue burden.

Applicants maintain that Groups 2-37 define a single inventive concept. Accordingly, applicants respectfully request that the Examiner reconsider and withdraw the restriction requirement and examine on the merits Groups 2-37, i.e. claims 52 and 53 regarding all SEQ ID NOs. originally listed.

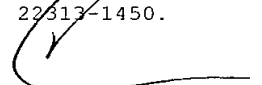
If a telephone interview would be of assistance in advancing prosecution of the subject application, applicants' undersigned attorneys invite the Examiner to telephone either of them at the number provided below.

No fee, other than the enclosed \$1,480.00 sum, is deemed necessary in connection with the filing of this Amendment. However, if any additional fee is required, authorization is hereby given to charge the amount of any such fee to Deposit Account No. 03-3125.

Respectfully submitted,



John P. White
Registration No. 28,678
Alan J. Morrison
Registration No. 37,399
Attorneys for Applicant(s)
Cooper & Dunham, LLP
1185 Avenue of the Americas
New York, New York 10036
(212) 278-0400

<p>I hereby certify that this correspondence is being deposited this date with the U.S. Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.</p> <p> 12/15/03</p> <p>Alan J. Morrison Date Reg. No. 37,399</p>
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